

## CCRB INVESTIGATIVE RECOMMENDATION

|  |  |                                     |   |   |                                 |
|--|--|-------------------------------------|---|---|---------------------------------|
| Investigator:<br>Charis Jones                    | Team:<br>Squad #4  | CCRB Case #:<br>201904723           | <input checked="" type="checkbox"/> Force             | <input checked="" type="checkbox"/> Discourt. | <input type="checkbox"/> U.S.   |
|  |  |                                     | <input type="checkbox"/> Abuse                        | <input type="checkbox"/> O.L.                 | <input type="checkbox"/> Injury |
| Incident Date(s)<br>Monday, 05/20/2019 11:30 PM  | Location of Incident:<br>Corner of Wilcox Street and Bruckner Avenue | Precinct:<br>121                    | 18 Mo. SOL<br>11/20/2020                              | EO SOL<br>7/7/2021                            |                                 |
| Date/Time CV Reported<br>Fri, 05/31/2019 6:53 PM | CV Reported At:<br>CCRB  | How CV Reported:<br>On-line website | Date/Time Received at CCRB<br>Fri, 05/31/2019 6:53 PM |   |                                 |

| Complainant/Victim | Type | Home Address |
|--------------------|------|--------------|
|                    |      |              |

| Subject Officer(s)    | Shield | TaxID  | Command |
|-----------------------|--------|--------|---------|
| 1. POF Talia Figueroa | 26729  | 965098 | 121 PCT |
| 2. POM James Barbee   | 22173  | 952441 | 121 PCT |
| 3. POF Nicole Latona  | 00708  | 960786 | 121 PCT |
| 4. POF Tracey Rooney  | 05882  | 953338 | 121 PCT |
| 5. An Officer         |        |        |         |
| 6. Officers           |        |        |         |

| Witness Officer(s)       | Shield No | Tax No | Cmd Name |
|--------------------------|-----------|--------|----------|
| 1. POM James Moussa      | 31415     | 963664 | 121 PCT  |
| 2. POM Christophe Schiro | 15133     | 956244 | 121 PCT  |
| 3. SGT Steven Zielinski  | 02478     | 943988 | 121 PCT  |
| 4. POM Nicholas Franzese | 14599     | 960553 | 121 PCT  |
| 5. POF Janine Williams   | 05836     | 965617 | 121 PCT  |
| 6. POF Celine Diaz       | 09228     | 928191 | 121 PCT  |

| Officer(s)           | Allegation  | Investigator Recommendation |
|----------------------|---|-----------------------------|
| A.POM James Barbee   | Force: Police Officer James Barbee used physical force against § 87(2)(b)     |                             |
| B. Officers          | Force: Officers used physical force against § 87(2)(b)                        |                             |
| C.POF Nicole Latona  | Discourtesy: Police Officer Nicole Latona spoke discourteously to § 87(2)(b)  |                             |
| D.POF Tracey Rooney  | Discourtesy: Police Officer Tracey Rooney spoke discourteously to § 87(2)(b)  |                             |
| E.POF Talia Figueroa | Discourtesy: Police Officer Talia Figueroa spoke discourteously to § 87(2)(b) |                             |
| F. An Officer        | Discourtesy: An Officer gestured discourteously toward § 87(2)(b)             |                             |

### Case Summary

On May 31, 2019, § 87(2)(b) filed this complaint online at the CCRB website.

On May 20, 2019, at approximately 11:30 p.m., Police Officer Talia Figueroa and Police Officer Christopher Schiro, of the 121<sup>st</sup> Precinct, responded to a dispute between § 87(2)(b) and an unknown male at the corner of Wilcox Street and Bruckner Avenue in Staten Island. PO Figueroa requested additional units to the location. Police Officer James Barbee, Police Officer James Moussa, Police Officer Nicole Latona, Police Officer Nicholas Franzeese, Police Officer Tracey Rooney, Police Officer Janine Williams, and Police Officer Celine Diaz (all assigned to the 121<sup>st</sup> Precinct) arrived at the location. PO Barbee punched § 87(2)(b) in the face (**Allegation A: Force, § 87(2)(g)**). The officers on scene surrounded § 87(2)(b) took her to the ground, and handcuffed her (**Allegation B: Force, § 87(2)(g)**).

Officers stood § 87(2)(b) up and leaned her against a vehicle. PO Latona, PO Rooney, and PO Figueroa used profanity towards § 87(2)(b) (**Allegation C: Discourtesy, § 87(2)(g)**) (**Allegation D: Discourtesy, § 87(2)(g)**) (**Allegation E: Discourtesy, § 87(2)(g)**). § 87(2)(b) was arrested for disorderly conduct and was taken to the 121<sup>st</sup> Precinct stationhouse where she was lodged in a holding cell. While in the cell, an unidentified officer made a crossing gesture towards § 87(2)(b) (**Allegation F: Discourtesy, Officer Unidentified**).

PO Barbee failed to prepare a TRI regarding this incident (**Allegation G-Other Misconduct**).

The officers who responded to the location recorded portions of this incident on their body-worn cameras. PO Figueroa, PO Moussa, PO Schiro, and PO Williams' body-worn-cameras captured most clearly the allegations described above (Board Review 01, 02, 03, 04).

### Findings and Recommendations

**Allegation (A) Force: Police Officer James Barbee used physical force against § 87(2)(b)**

**Allegation (B) Force: Officers used physical force against § 87(2)(b)**

§ 87(2)(b) (Board Review 05) testified that she was sitting in her parked vehicle at the corner of Wilcox Street and Bruckner Avenue when she observed a tow truck stop in front of her car. The truck latched on to § 87(2)(b)'s vehicle and began to lift it. The driver exited the truck and informed § 87(2)(b) that he was taking the car because it was stolen. § 87(2)(b) denied that it was stolen and requested that he call the police while she waited in her car. Five minutes later, multiple officers arrived. § 87(2)(b) put her car in reverse and attempted to back off the tow truck but was unsuccessful. § 87(2)(b) exited her vehicle, approached the officers who stood at the rear of her car, and informed them that her car was not stolen. § 87(2)(b) felt her left hand being put into a cuff behind her back. § 87(2)(b) did not recall which officer handcuffed her hand. Simultaneously, officers pulled § 87(2)(b) back and § 87(2)(b) began to lose her balance. PO Barbee approached § 87(2)(b) extended her loose right arm in front of her to stop him from getting closer. PO Barbee punched § 87(2)(b) on the left side of her face and took her to the ground. § 87(2)(b)'s right hand was then handcuffed, and the

officers pushed § 87(2)(b) down to the ground. The left side of her face hit the ground and the officers pulled on her arms.

The investigation obtained body-worn camera footage from the officers who responded to the incident. The BWC's of PO Figueroa, PO Moussa and PO Schiro most clearly capture this portion of the incident.

PO Figueroa's BWC recording is approximately two minutes in length and audio begins at 00:30 seconds (Board Review 01). PO Figueroa faces § 87(2)(b). PO Barbee exits his marked vehicle and approaches § 87(2)(b). § 87(2)(b) says "let's talk" as she claps her hands and walks towards PO Barbee. As § 87(2)(b) approaches him, PO Barbee tells her to get out of his face. PO Barbee uses both hands to push § 87(2)(b) away from him. § 87(2)(b) attempts to push PO Barbee back in response as PO Figueroa and PO Schiro surround § 87(2)(b). A struggle ensues and § 87(2)(b) is taken to the ground.

PO Moussa's BWC recording video shows himself and PO Barbee exiting the vehicle and approaching § 87(2)(b) (Board Review 02). PO Figueroa and PO Schiro are standing by § 87(2)(b). At 00:27, a struggle between PO Barbee and § 87(2)(b) is visible, but it is unclear what occurs. At 00:28, PO Figueroa and PO Schiro get involved and appear to attempt to restrain § 87(2)(b). At 00:30 seconds, PO Barbee punches § 87(2)(b) in the face.

PO Schiro's BWC recording shows § 87(2)(b) speaking with an unidentified male (Board Review 03). Audio begins at approximately 00:30. At approximately 00:19, PO Barbee is seen walking towards § 87(2)(b). § 87(2)(b) also walks towards PO Barbee and moving her arms. At 00:20, PO Barbee pushing § 87(2)(b) away from him. § 87(2)(b) extends her arms towards PO Barbee and pushes his arms away from her body. § 87(2)(b) and PO Barbee are face-to-face and a struggle ensues, but their actions are unclear as PO Schiro and PO Figueroa also engage in the struggle. § 87(2)(b) is taken to the ground.

PO Barbee (Board Review 06) testified that he arrived at the location and saw § 87(2)(b) yelling at PO Figueroa with her hands clenched. PO Barbee exited the vehicle and § 87(2)(b) approached towards him, got in his face, and yelled that she did not want to talk while she clapped her hands. PO Barbee asked § 87(2)(b) to talk on the sidewalk and she remained in his face. PO Barbee extended both of his arms in front of him and pushed § 87(2)(b) back. § 87(2)(b) pushed back with her body weight. § 87(2)(b) flipped both of PO Barbee's hands in a circular motion so that they were no longer on her shoulders. § 87(2)(b) then leaned into PO Barbee with a closed fist. PO Barbee thought § 87(2)(b) was trying to hurt him and punched § 87(2)(b) in the face as a result. At that time, PO Barbee considered § 87(2)(b) to be under arrest for attempted assault. § 87(2)(b) was still standing after he punched her so he took her to the ground. § 87(2)(b) was face-down on the ground and refused to give the officers her hands. PO Barbee tried to move one of § 87(2)(b)'s hands away from her mouth and she attempted to bite him. PO Barbee ordered § 87(2)(b) to stop resisting and to give him her hands. § 87(2)(b) was eventually handcuffed.

PO Figueroa (Board Review 07) testified that PO Barbee and PO Moussa arrived at the location immediately after she requested additional units. PO Barbee and PO Moussa exited their vehicle. § 87(2)(b) approached § 87(2)(b) PO Barbee, while clapping her hands, and said, "Let's talk." § 87(2)(b) had her hands clenched directly in front of her chest and looked as though she was going to push PO Barbee. PO Barbee then pushed § 87(2)(b) with both hands. PO Figueroa did not recall if she observed PO Barbee punch § 87(2)(b) in the face.

NYPD Patrol Guide Procedure 221-01 and NYPD Patrol Guide 221-02 explain the circumstances under which officers may use physical force; When a member of service must gain

compliance, control, or custody of an uncooperative subject, an officer is permitted to use force that is reasonable under the circumstances and to ensure the safety of a member of the service or a third person (Board Review 08) (Board Review 09).

§ 87(2)(g)  
[REDACTED]

**Allegation (C) Discourtesy: Police Officer Nicole Latona spoke discourteously to § 87(2)(b)**

**Allegation (D) Discourtesy: Police Officer Tracey Rooney spoke discourteously to § 87(2)(b)**

**Allegation (E) Discourtesy: Police Officer Talia Figueroa spoke discourteously to § 87(2)(b)**

The above allegations were captured in the BWC recordings and not alleged by § 87(2)(b)

PO Williams' BWC, from 00:01 to 01:21, officers are attempting to restrain § 87(2)(b) who is moving, and they place her up against a vehicle. § 87(2)(b) appears to be handcuffed. Between 01:21 and 01:26, PO Latona says to § 87(2)(b) "Stop fucking moving." From 01:45 to 01:51 PO, Rooney says to § 87(2)(b) "Don't fucking grab my hand." § 87(2)(b) responds, "Who are you talking to?" PO Rooney leans towards § 87(2)(b) and says, "You, you just fucking grabbed my hand. Don't fucking grab my hand." At the same time, PO Figueroa says, "Get out of my fucking face, stop this fucking shit." PO Rooney says again, "You, don't fucking grab my hand" (Board Review 04).

PO Latona (Board Review 10) did not recall making the above discourteous statement to § 87(2)(b). However, after reviewing PO Williams' BWC, PO Latona acknowledged using the above profanity and said she did so because § 87(2)(b) tried to grab at her while handcuffed.

PO Rooney (Board Review 11) acknowledged using the above profanities during her interaction with § 87(2)(b) and said it was because § 87(2)(b) dug her nails into her skin.

PO Figueroa acknowledged using the above profanities and said it was because § 87(2)(b) was so close to her face, she could have given her a "kiss."

DAO-DCT Case Command:550/Case Number: 2013-10143 states that while officers are held to a high standard of conduct, traditional rules of etiquette cannot be applied to stressful law enforcement situations (Board Review 12).

§ 87(2)(b) turned around various times before PO Latona told her to "stop fucking moving." § 87(2)(g)

§ 87(2)(g)

The BWC does not capture whether or not § 87(2)(b) grabbed PO Rooney's wrists as PO Rooney alleged. § 87(2)(g)

The BWC shows that PO Figueroa was physically blocked off by another officer when she told § 87(2)(b) to "Stop this fucking shit." § 87(2)(g)

**Allegation (F) Discourtesy: An officer acted discourteously towards § 87(2)(b)**

§ 87(2)(b) testified that once she was at the stationhouse, she was lodged in a holding cell. While § 87(2)(b) was in the cell, an officer stood at the desk and taunted § 87(2)(b) by making a crossing symbol by touching his forehead and shoulders. § 87(2)(b) believed the officer behaved in this manner because, when officers had previously come to her residence for other unrelated issues, she would perform a sermon in front of them. § 87(2)(b) described this officer as tan skinned male with dark hair and a medium build.

§ 87(2)(g)

**Allegation (G) Other Misconduct Noted: Police Officer James Barbee failed to prepare a Threat, Resistance, or Injury Report.**

PO Barbee acknowledged using force during this incident. Three requests for TRI reports for this incident were returned with negative results (Board Review 13).

NYPD Patrol Guide Procedure 221-03 requires that officers generate a Threat, Resistance, or Injury Report whenever any level of force is used (Board Review 14).

Because PO Barbee failed to document using force against § 87(2)(b) it is recommended that he be cited for **other misconduct**.

**Civilian and Officer CCRB Histories**

- § 87(2)(b)  
§ 87(2)(b)  
§ 87(2)(b)  
§ 87(2)(b)
- PO Barbee has been a member-of-service for seven years and has been named a subject in five complaints and seven allegations, none of which were substantiated. § 87(2)(g)

- in four complaints and eight allegations, none of which were substantiated. § 87(2)(g)

## Mediation, Civil and Criminal Histories

- § 87(2)(c) (impair contract awards or CBAs), § 87(2)(b)

Squad No.: 4

Investigator: \_\_\_\_\_

Signature \_\_\_\_\_ Print Title & Name \_\_\_\_\_ Date \_\_\_\_\_

Squad Leader: \_\_\_\_\_

|           |                    |      |
|-----------|--------------------|------|
| Signature | Print Title & Name | Date |
|-----------|--------------------|------|

Reviewer: \_\_\_\_\_

Signature \_\_\_\_\_ Print Title & Name \_\_\_\_\_ Date \_\_\_\_\_